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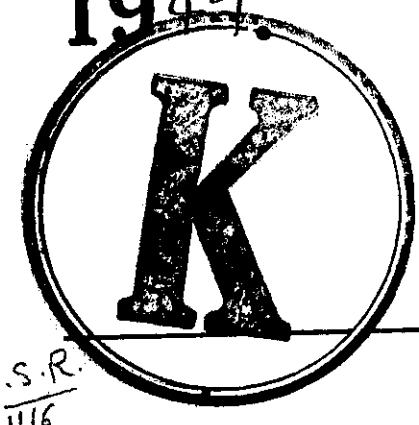
1949.



K.S.R.
11/6

File No. L.R.C. Bom II 49(R)

Legal DEPARTMENT

B BRANCH

Subject:—

Rules under the

Bombay Land Revenue Code

1879.

E
R-8

File No. L.R.C. Bom.II/49(R)

Std. Sectt. Slip 24 B a.

262-B.

Bombay Land Revenue Code, 1879.

NOTIFICATION.

Revenue Department.
Bombay Castle, August 1949.

No. 10392/45. — The following draft of a notification which it is proposed to issued under section 214 of of the Bombay Land Revenue Code, 1879 (Bom. V of 1879), is published as required by sub-section (3) of the said section 214 for the information of all persons likely to be affected thereby, and notice is hereby given that the said draft will be taken into consideration on or after the day of 1949.

2. Any objections or suggestions which may be received by the Secretary to the Government in the Revenue Department from any person with respect to the said draft before the aforesaid date will be considered by the Government.

Draft Notification.

No. 10392/45.

In exercise of the powers conferred by section 214 of the Bombay Land Revenue Code, 1879 (Bom. V of 1879) the Government of Bombay is pleased to amend the Land Revenue Rules, (1921) as follows namely :-

" In rule 82 A of the said rules , for the letters and figures "Rs. 2½ the letters and figures "Rs. 10" shall be substituted."

By order of the Governor of Bombay.

Under Secretary to Government
Revenue Department.

716 K.S.R.
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Further Packet No. 1/6. 5/5.

Local Department.

A revised draft Notification is sent herewith.

sd/- J.R.D.
20/8.

Additional Secretary to Government.

I. R. to R.D. No. 9448, dated 22nd August 1949.

Madhav Deokedar.
4/6. c/5.

Legal Department.

In place of Revenue Department drafts at pages 77 to 83 ante, a revised draft notification is sent herewith.

2. The view taken by the Commissioners in their joint report dated the 9th September 1941 at page 29 ante that paragraph 1 of R.L.A's opinion No. 9436, dated the 24th October 1940 does not bar the framing of a separate rule to deal with the question of doors opening on Government land is correct.

3. As desired by Secretary, Revenue Department, in his note at page 76 ante, a provision has also been made in the proposed rule and form of licence to cover the cases where permission is sought to to construct or retain windows overlooking Government land.

4. As pointed out in paragraph 2 of R. L.A's opinion No. 9436, dated the 24th October 1940, no specific provision is necessary to lay down that the fees payable under the proposed rule would be leviable as arrears of land revenue. The last part in condition No. (3) in the Revenue Department draft at p. 79 ante has therefore been deleted.

sd/-
4/4. J.R.D

Additional Secretary to Government.

U. R. to R.D. No. 12423, dated the 4th November 1949.

Madhav Raokadam.
1/6. c/5.

NOTIFICATION.

Revenue Department,

Bombay Castle, 1949.

Bombay 1 Revenue Code 1879.

The following draft of a notification which it is proposed to issue under section 214 of the Bombay Land Revenue Code, 1879 (Bom. V of 1879), is published as required by sub-section (3) of the said section 214 for the information of all persons likely to the affected thereby, and notice is hereby given that the said draft will be taken into consideration on or after the 1949.

2. Any objections or suggestions which may be recieved by the Secretary to the Government of Bombay in the Revenue Department with respect to the said draft before the aforesaid date will be considered by the Government of Bombay.

Draft Notification.

No. In exercise of the powers conferred by section 214 of the Bombay Land Revenue Code 1879 (Bom.I of 1879), the Government of Bombay is pleased to amend the Bombay Land Revenue Rules, 1921, as follows, namely:-

1. After rule 47A of the said rules, the following rule shall be inserted, namely:-

" 47B(1) The Collector or any other officer authorised by Government in this behalf may permit the construction or retention of a window or door overlooking or opening on Government land on payment of an annual sum of 8 as for each window or door, as the case may be.

(2) A lincence in Form JJA shall ordinarily be given for such purposes, subject to such additional conditions

as the Collector or authorised officer with the previous sanction of the Commissioner may deem fit to impose.

2. After Form JJ appended to the said rules, the following form shall be inserted, namely:-

" Form JJA

(See rule 47B)

Form of licence for windows overlooking / door opening on Government land.

This indenture made the day of one thousand nine hundred and between the Governor of Bombay (hereinafter referred to as 'the licensee), (which supervision shall unless it is excluded by or repugnat to the context, include his heirs, executors, administrators and assigns) of the other part.

Whereas the Government is possessed of an absolutely entitled in perpetuity free from encumbrances to the peice of land measuring approximately square yards and situate at (village) in the taluka of the district and bearing Survey No. and bounded on the North by on the South by on the East by on the West by and of the shape and approximate dimensions shown in the sketch hereto annexed (hereinafter, referred to as 'the said land');

And whereas the licensee wishes to construct / has constructed a window overlooking / a door opening on the said land in his building at in the said taluka of the said district and bearing survey No.

And whereas the licensee has applied for permission to construct / retain the said window overlooking / door opening the said land and whereas the Government has by Government Resolution, Revenue Department,

No. /49, dated the 1949,

authorised the Collector of
Executive Engineer Division
referred to as "the Collector"
" the Executive Engineer" to grant such permission;

And whereas the Collector has
Executive Engineer Division
agreed to grant such permission on the terms and conditions herein after mentioned

Now, this indenture withnesseth that in consideration of of the payment by the licensee of the sum hereby reserved and of the conditions hereafter contained and on the part of the licensee to be observed and performed.

The Collector hereby grants to the licenseee permission
the Executive Engineer
to construct the said window overlooking on the said land subje
retain. door opening.
to the following conditions, namely :-

(1) The licensee shall pay to the Government every year durin the continuance of this license at the office of the Collector
Executive Enginee
on the first day of the annual sum of in cash, the first of such payments to be made on the day of ;

(2) The permission hereby granted shall not in any way be deemed to convey to the licensee any right to or over or an interest in the said land or any easement thereof;

(3) In case the licensee's building to which the said windo
door
is attached falls down or is destroyed by fire, eartchquake, storm or as a result of civil commotion or by any other cause whatsoever o is reconstructed, this license shall immediately determine and licensee shall not be entitled to claim any right to put up
onstruct

a ~~same~~ similar window/door in any ~~such~~ building which may be construct in lieu of the building fallen or destroyed as aforesaid;

(4) The Collector/Executive Engineer may cancel this licence at any time by giving to the licensee one month's notice in writing of his intention and at the expiration of such period this licence shall cease and be void; and the Collector/Executive Engineer may get the window/door closed or obstructed in such matter as he think proper.

(5) During the subsistence of this licence the said window/door shall be deemed to have been constructed and continued by the consent and permission in writing of the Government so that the right of licensee to any easements on the said land shall not become absolute or indefeasible by lapse of time.

In witness whereof

the Collector/Executive Engineer of ~~Bombay~~ district/Division has on behalf of the Governor of Bombay hereunto set his hand and seal of his office the day and year first above written.

Signature of the Collector/Executive Engineer

in the presence of—

2.

I accept the above conditions

Signature of the licensee in

presence of—

1.

2.

By order of the Governor of Bombay.

Madhav Rao/am 1/6. c/5. Secretary to Government.

Please see Addl. Secy's opinions-

(1) No. 3292 dated the 26th March 1949; and

(2) No. 9375 dated the 20th August 1949.

With reference to the advice given under the latter opinion that Chapter XIV of the L.R. Rules should be amended with a view to curtail the present power of Govt. to extend the concessional rates in B.S.D. to commercial and industrial use of land, the Secy., states as follows:-

" the only reference to reduction ~~or [illegible]~~ (or remission) of n.a.a. in the L.Rev. Rules occurs in clause I of rule 82 and this may be deleted since there is no neeessity to make provision in the rules either about the power to remit (which is an inherent power) or about the manner and extent of remissions that may be granted from time to time, as circumstances require.

The grant of remission by execution instructions will facilitate levy of full n.a.a.when it is decided upon either generally on in a ~~[illegible]~~ particular case."

2. As the facts leading to the insertion of rule 82 VI of the land Revenue ~~[illegible]~~ Rules are relevant to the proposal now made by the Secy., R. D. the following facts are brought to the notice of R. D.

2. In 1928 there was a proposal to abolish the concession given by old rules 83 and 85 (2) of the B. R. Rules in regards to the reduced assessment on non-residential use of lands and under G.R.R.D.No. 6694/24, dated 24th October 1928 Govt. laid down as its policy that concession laid down in old rule 85(2) shoul

should also be made applicable to non-residential properties only in B.S.D. in view of the peculiar circumstances of the B.S.D. The Comm'r. of Settlement was therefore asked to draft suitable amendments to L.R. Rules. Para. VI to rule 82 came to be inserted as a result of the above intention. Not only that but a concession obtaining in B.S.D. was extended to the City of Ahmedabad and its suburbs by para 2 of G.R.R.D.No.463-D dated 8th June 1935 by applying rule 82 thereto. This concession was further followed by a similar concession to non-residential plots in Ahmedabad City under G.R.R.D. No. 463 D dated 30th May 1938. The object of pointing out the above order is to show that the power of reduced assessment can be exercisable under rule 82 VI in respect of both residential plots as well as plots for commercial or industrial purposes. The proposal now is to exclude plots for commercial or industrial purpose from the purview of rule 82 VI. In order to deprive an occupant of land of his right to claim the concession under rule 82VI, it is legally necessary to amend the said rule. The object in view cannot achieved by embodying portion 'A' in notification at p. 133 ante proposed to be issued under that sub-rule as the function of such a notification is to specify merely the extent of reduced assessment and not to specify under what circumstances the reduced assessment would apply to a plot.

3. If the whole of sub-rule VI of rule 82 is deleted, as now proposed by Secy. R.D. there will not remain any power with Government to reduce the standard n.a. assessment even in respect of plots used for non-commercial or non-industrial purposes. Under rule 43 of the land revenue rules read with sec. 48 of the Bom. Land Revenue Code, land for building site shallbe granted in accordance with the provisions of that rule. An assessment of such bui

such building site has to altered under rules 81 to 85 or 81 to 86 asthe case may be. If sub-rule VI of rule 82 is deleted, no concession in rate will then be permissible in virtue of the inherent power of Govt. so that power has to be exercised as provided under the rules and not by executive orders.

sd/- K.J.P.
8/11

Addl. Secy

sd/- J.R.D.
8/11

Legal Department.

As the facts leading to the insertion of rule 82 VI of the Land Revenue Rules are relevant to the proposal now made by the Secretary, Revenue Departmen.. the following facts are brought to the notice of of Revenue Department.

2. In 1928 there was a proposal to abolish the concession given by old rules 83-and 85(2) of the land Revenue Rules in regards to the reduced assessment on non residential use of lands and under Government Resolution, Revenue Department No. 6694/24, dated the 24th October 1928 Government laid down as its po. licy that concession laid down in old rule 85(2) shou-ld also be made applicable to non-residential properti-es only in Bombay Suburban District, in view of the peculiar circumstances of the Bombay Suburban District. The Commissioner of Settlement was therefore asked to draft suitable amendments to Land Revenue Rules. Para. VI to rule 82 came to be inserted as a result of the above intention. Not only that but concession obtai-ning in Bombay Suburban District was extended to the city of Ahmedabad and its suburbs by para. 2 of Gover-nment Resolution, Revenue Department No. 463-B, dated the 8th June 1935, by applying rule 82 thereto. This concession was further followed by a similar concession to non-residential plots in Ahmedabad City under Government Resolution, Revenue Department No. 463-B dated 30th May 1938. The object of pointing out the above order is to show that the power of redu-ced assesament can be exercisable under -

in respect of both residential plots as well as plots for commercial or industiral purposes. The proposal now is to exclude plots for commerical or industrial purpose from the purview of rule 82 VI. In order to deprive an occupant of land of his right to claim the concession under rule 82 VI, it is legally necessary to amend the said rule. The object in view cannot be achieved by embodying portion 'A' in the notification at page 133 ante proposed to be issued under that sub-rule as the function of such a notification is to specify merely the extent of reduced assessment and not to specify under what circumstances the reduced assessment would apply to a plot.

3. If the whole of sub-rule VI of rule 82 is deleted, as now proposed by Secretary, Revenue Department, there will not remain any power with Government to reduce the standard non-agricultural assessment even in respect of plots used for non-commercial or non-industrial purposes. Under rule 43 of the Land Revenue Rules read with sm section 48 of the Bombay Land Revenue Code, land for building site shall be granted in accordance with the provisions of that rule. An assessment of such building site has to altered under rules 81 to 85 or 81 to 86, as the case may be If subrule VI of rule 82 is deleted, no concession in rate will then be permissible in virtue of the inherent power of Government as that power has to be exercised as provided by the Code under the rules and not by executive orders.

J.R.D.

Additional Secretary to Government,
U. R. to R.D. No. 12682, dated the 10th November 1949.

Madhav Baokedan.
1/6. c/5.